



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEABROOK EMPLOYEES ASSOCIATION *

Complainant *

v. *

TOWN OF SEABROOK, N.H. *

Respondent *

CASE NO. M-0575:2

DECISION NO. 86-23

APPEARANCES

Representing Seabrook Employees Association

J. Joseph McKittrick, Esquire

Representing Town of Seabrook, N.H.

Gary W. Holmes, Esquire

Also in Attendance

Norma Adams

Earline U. Locke

Cora Stockbridge

Clyde Brown

Eric H. Small

BACKGROUND

The Seabrook Employees Association ("Association") filed improper practice charges on September 3, 1985 against the Town of Seabrook ("Town") charging the Town with violating RSA 273-A:5 by engaging in practices..."restraining, coercing and interfering" with Cora E. Stockbridge, President of the Association, in legitimate exercise of her activities as a union officer of a regular recognized bargaining unit and also charging the Town with restraining, coercing and interfering with the exercise of rights guaranteed by RSA 273-A:5 of other employees within the bargaining unit.

Specifically the Association alleges that the Town has and is implementing substantial changes in working conditions as a result of their reliance on a specific interpretation of Fair Labor Standards Act as it applies to public employees. The Town has unilaterally and without consultation changed the status of certain members of the bargaining unit from covered to exempt. Further the Town has instituted the use of time clocks, a substantial change of working conditions without the consent, notification or negotiations with the recognized bargaining unit representative.

Additionally the Town of Seabrook is charged with consistently refusing to supply Mrs. Stockbridge, the recognized representative of the union, with information

vital to the pursuit of her legitimate activities as union president. The Association has charged that each time Cora Stockbridge has attempted to discuss the implications of the Fair Labor Standards Act with representatives of the Town she has been informed that they have been ordered by the Board of Selectmen not to speak with her on the subject. The Association alleges that all these acts are a clear violation of a duty to meet with and bargain over changes of working conditions and represent a clear deliberate attempt to restrain, coerce and interfere with the exercise of collective bargaining rights established by New Hampshire RSA 273-A:5.

In its answer the Town of Seabrook recognizes that Cora Stockbridge is the president of the newly formed Seabrook Employees Association but denies that they have ever interfered with her rights under RSA 273-A.

The Town further states that after consultation with the Department of Labor officials that they have determined that four employees are exempt supervisors under the controlling language of the Fair Labor Standards Act and deny that this determination is a violation of RSA 273-A:5 or that it changes the working conditions of any employees contrary to any law. The Town further states that the use of time clocks is not a violation of law and therefore it is not an unfair labor practice and that it is a simple and accurate time managing system and it's within the discretion and control of the Town. The Town further states that it has not denied Cora Stockbridge as President of the Association any materials over which it has control except personnel records which have not been specifically authorized for release by the employee. The Selectmen of the Town admit that they have instructed the Administrative Assistant not to discuss the subject of the Fair Labor Standards Act with any Town employee but rather has instructed him to refer all questions to the Board of Selectmen directly. The Town denies that this directive is an unfair labor practice.

The Town further states that there is no current contract or agreement with the Association and that the Town has not received any requests to initiate bargaining with the Association. The Town further stipulates that the issue of the application of the Fair Labor Standards Act is not a matter over which the PELRB can take jurisdiction. The Town further charges that the Seabrook Employees Association by filing its charges with regard to the use of time clocks is attempting to interfere in the exclusive rights of the Town to manage its own affairs and to implement simple and accurate time managing systems or as recommended and required by the Fair Labor Standards Act since that act is now applicable to municipalities by virtue of the court decision in Garcia vs. San Antonio MTA.

A hearing was held by the PELRB at the Seabrook Town Office on January 28, 1986 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

- (1) At the hearing it was made clear that there are two units in the Town of Seabrook, one representing the police and the other unit which represents all town employees except the police and fire department.
- (2) The Town instituted the use of time clocks for its employees on August 14, 1985.
- (3) There had been no discussion with the Association representative prior to the date of use of time clocks, nor since. (The Town's Administrative Assistant refused to discuss matters of this kind with the representative.)
- (4) The initiation of the use of time clocks made it difficult if not impossible

to continue with the so-called "flexihours" and also required certain employees (i.e., the dump attendant) to return to certain places in the town in order to use the time clock, practices which had not been in existence prior.

- (5) Testimony revealed that during the course of her duties as union representative President Stockbridge had participated in a series of grievance meetings and that the town administrators and the town selectmen were certainly aware of her role as President of the Association and her duty to participate in grievances and other matters pertaining to the union.
- (6) During the course of the grievance hearings in which Mrs. Stockbridge participated, materials were requested by her from the Town and were delayed in their delivery to her. These requests had begun in the course of the grievance hearings starting around June of 1985 and the series of transcripts of hearings were delivered to Mrs. Stockbridge sometime after August 26, 1985, when she received all the minutes that she had requested.
- (7) The union does not allege that anything improper was done by the selectmen in their executive sessions but that the union needs minutes of those sessions in order to be sure that nothing improper was done and that these minutes had been delivered finally and properly but certainly not in a timely fashion. The Association President testified that she felt that she could not get any results from the selectmen unless the Association's attorney intervened.
- (8) Testimony by Mrs. Stockbridge asserted that when Mrs. Stockbridge wished to be present at a meeting held with police lieutenants Mr. Small refused to discuss anything so long as Mrs. Stockbridge was present. (Police lieutenants are in Unit B of the Seabrook Employees Association.) The lieutenants did meet with Mrs. Stockbridge and subsequently Mrs. Stockbridge did attend but not until after the lieutenants had requested by letter that she be permitted to attend the meeting as their representative.
- (9) Mrs. Stockbridge testified that she felt that the changing of the two police lieutenants, the water superintendent and the recreation director to "exempt positions" under the Fair Labor Standards Act was an unfair labor practice in that certain working conditions were changed i.e., that exempt personnel would receive no retroactive pay.
- (10) Mrs. Stockbridge testified that she had requested the selectmen to discuss these changes with her and had received no response.
- (11) Mrs. Stockbridge further testified that she had had several meetings with the selectmen in the course of the pursuit of various grievances.
- (12) Mrs. Stockbridge further testified that no selectman had ever said to her that they were unwilling to discuss anything connected with the union but that merely the Town had delayed information on various requests made by Mrs. Stockbridge.
- (13) Testimony also revealed that the Town had initiated a "time management form" for any persons who would be taking time off from their Town duties for any other job or purpose. Testimony established that this was a new procedure in the Town of Seabrook beginning in June or July 1985 and that Mrs. Stockbridge was required to use this form specifically

when attending any PELRB hearing or at any other times when she was acting in her capacity as union president. Mrs. Stockbridge was not aware that any other union personnel were required to use these forms.

- (14) Testimony from Selectman Locke indicated that the time clocks were initiated because of problems with people turning up late to work, etc. Further testimony indicated that the Fair Labor Standards Act changes were required due to the fact that the new application of the Act requires overtime pay and not the use of comp time. The selectmen felt that these were not changing working conditions and therefore no discussion with the union was required.
- (15) Testimony by former Administrative Assistant Small indicated that he was instructed not to talk to President Stockbridge because the selectmen preferred that Mrs. Stockbridge talk directly to them but that no such talks took place. Small further testified that one of the reasons for his not talking to Mrs. Stockbridge was that the Board of Selectmen told him they didn't want to produce any more "grievances". Small testified that the restriction on his discussions were caused by information leaking out of discussions that he'd had with respect to the application of the Fair Labor Standards Act. Further testimony established that negotiations with the Association for a contract had begun recently with a negotiator from the New Hampshire Municipal Association representing the Board of Selectmen.
- (16) Small further testified that the use of the "Town Management Forms" was for the purpose of finding out what was going on and was not directly against union people and that they were applicable to everyone not just to President Stockbridge. Mr. Small further testified that the delay in providing the requested information to Mrs. Stockbridge was caused simply by trying to find out if he should give it out and because of the backlog of work that was required to supply these requests. Small further testified that the material was delivered to Stockbridge over the period of a few days in late August perhaps between August 26 and August 29.

RULINGS OF LAW

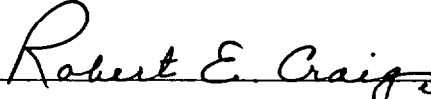
With respect to the imposition and use of time clocks it is the opinion of the PELRB that this is a management prerogative for the purpose of determining the hours of work and the attendance records of the employees of the Town. Insofar as the use of time clocks in any way changes the patterns of work of those or any other employees, that is to say if the use of the time clocks in any way has an impact on the hours of work or wages or the conditions of employment, then the town is required under RSA 273-A to negotiate those impacts with the Association as the exclusive representative of the employees.

With respect to the request for information from the Board of Selectmen by the exclusive representative of the Association its President Mrs. Cora Stockbridge we find that the Town has produced the necessary materials but only after unusual and inappropriate delays. We found that there has been a pattern of delay and lack of cooperation between the Town and its officers with respect to the representation of the Association and the newly formed exclusive representation of the new unit formed in the Town of Seabrook. Unusual delay and lack of communication constitute an unfair labor practice in violation of 273-A:5, I, (a) as an interference in the rights guaranteed to the Association representatives conferred by this chapter.

ORDER

Since the parties are in the process of negotiating their first contract the PELRB simply orders the Town to continue its negotiations with the union in an effort to establish a high level of mutual accommodation and to be prepared to negotiate those items of working conditions which will be considered an impact of the adoption of the use of the time clocks as well as the new definitions of employees under the Fair Labor Standards Act.

The PELRB declines to find an unfair labor practice against the Town in this case but would like to urge all parties to refrain from any dilatory actions which might contribute to the filing of complaints in the future. The PELRB urges the Town to be more forthcoming in its approach with the Association representatives and not simply leave everything to that person.


ROBERT E. CRAIG, Chairman

Signed this 23rd day of April, 1986.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Richard Roulx and James Anderson present and voting. Also present, Evelyn C. LeBrun, Executive Director.